IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 52 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARWAD SANTOSHBHAI SONDABHAI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner No. 1

MR SAMIR DAVE, APP for Respondents.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/04/2002

ORAL JUDGEMENT

1. The present petition has been filed by the petitioner challenging the legality, validity and propriety of the impugned order dated 26-9-2001 passed by the respondent no. 1 in Appeal preferred by the

petitioner u/s 60 of the Bombay Police Act, 1951 on confirming the order passed by the respondent no. 2 dated 18-8-2001 in Externment Case No. 42 of 2000, externing the petitioner from District Bhavnagar and other five other contiguous districts namely Surendranagar, Rajkot, Amreli, Junagadh and Ahmedabad for a period of one year.

2. In this matter, Rule was issued by this Court and pursuant that Mr. Samir Dave, learned A.P.P. for the State appeared on behalf of the respondents. I have heard Ms. Bela Prajapati for Mr. M.B. Mangukia, learned counsel for the petitioner and Mr. Samir Dave learned A.P.P. for the respondents.

3. The learned counsel for the petitioner has raised various contentions and grounds in the petition. However, while arguing the matter, she has restricted her arguments only on the ground of delay which is required to be dealt with by this Court. Learned counsel for the petitioner contended that there is delay in passing the impugned order and for that she has drawn my attention towards show cause notice dated 22-11-2000 issued by the Sub-Divisional Magistrate, Bhavnagar. The learned Counsel for the petitioner has further contended that the proceedings have been concluded on 26-9-2001 when the Dy. Secretary, Govt. of Gujarat passed the impugned order on 26-9-2001 confirming the order dated 18-8-2001 passed by the Sub-Divisional Magistrate, Bhavnagar and therefore there is a delay in passing the impugned order dated 26-9-2001 and hence the impugned externment orders dated 18-8-2001 and 26-9-2001 are vitiated and bad in the eye of law. In support of her argument she has relied on the decision of this Court reported in 1989 (1) G.L.R. 63 more particularly para 6.

4. Learned A.P.P. Mr. Dave after verifying the record which was available with him and after going through the notice and impugned orders of externment, has fairly admitted that there is delay in concluding the externment proceedings and in passing the aforesaid impugned orders dated 18-8-2001 and 26-9-2001.

5. It is established that the notice was issued by the Sub-Divisional Magistrate, Bhavnagar on 22-11-2000 and thereafter the proceedings have been concluded by passing the impugned externment order on 18-8-2001 by the Sub-Divisional Magistrate, Bhavnagar which has been confirmed by the Dy. Secretary, Govt. of Gujarat, vide order dated 26-9-2001. Thus, there is delay in passing the impugned orders and hence the impugned orders are

illegal and bad in the eye of law and therefore the same require to be quashed and set aside.

6. In view of the foregoing reasons, this Special Criminal Application deserves to be allowed. Accordingly, the present Special Criminal Application is allowed and the impugned externment order dated 18-8-2001 passed by the Sub-Divisional Magistrate, Bhavnagar at Annexure-B as well as the order dated 26-9-2001 passed by the Dy. Secretary, Govt. of Gujarat, Gandhinagar at Annexure-C, are hereby quashed and set aside. Rule is made absolute.

(R.P. Dholakia, J.)
/JVSatwara/